by a person's head. *State v. Welch* (1892) 36 W. Va. 690. Testimony, "that the ends of a person's fingers were like a burn, shiny," also has been held unobjectionable. *Fortier v. Western F'd'y Co.* (1915) 182 Ill. App. 115. The decision also in a very recent case held admissible an opinion that cuts on plaintiff's thumb were teeth marks which were caused by a bite. *Patterson v. Blatti* (1916) 157 N. W. (Minn.) 717. The principal case presents an interesting variation of the applicability of the rule, but in no sense does it seem a departure in principle.

M. S. B.

EVIDENCE—NON-EXPERT'S OPINION AS TO MENTAL CAPACITY—THE MASSACHUSETTS DIVISION LINE.—RAYMOND V. FLINT (1917) 114 N. E. (MASS.) 811.—In a proceeding involving the mental condition of a deceased grantor, a witness was asked whether she noticed anything in the deceased's conversation, or otherwise, that indicated mental failing. This question was objected to on the ground that it called for an expression of an opinion by a non-expert witness. *Held,* that the question was competent, as it called for a statement of "fact."

The general rule undoubtedly is that the opinion of a non-expert witness as to a disputed fact, whether it be operative or evidential in character, is inadmissible if it involves a fairly elaborate process of inference. *Masterson v. St. Louis Transit Co.* (1907) 204 Mo. 507; *Shuler v. State* (1906) 126 Ga. 630; *Lewis v. Brown* (1856) 41 Me. 448. As regards some questions, particularly those involving sanity or insanity, many jurisdictions allow the opinions or inferences of lay witnesses provided they have first placed before the jury the facts upon which the opinion is based. *State v. Smith* (1901) 106 La. 33; *The Berry Will Case* (1901) 93 Md. 560; *State v. Cross* (1900) 72 Conn. 722. A few courts indeed go farther and permit a non-expert witness to give his opinion after merely testifying to having had adequate opportunity for observing the person whose mental capacity is in issue. *Turner v. American Security & T. Co.* (1909) 213 U. S. 257; *Hardy v. Merrill* (1875) 50 N. H. 227; see *Grand Lodge v. Wieting* (1897) 168 Ill. 408; *Grimshaw v. Kent* (1903) 67 Kan. 463. The modern Massachusetts doctrine, however, is less liberal, for it permits a layman to testify to a person's general rationality only with reference to particular acts or specific conduct, and not independently of such particular acts or specific conduct. *Hogan v. Roche's Heirs* (1901) 179 Mass. 510; *Clark v. Clark* (1897) 168 Mass. 523; *May v. Bradlee* (1875) 127 Mass. 418; *Nash v. Hunt* (1874) 116 Mass. 251; see Wigmore, *Evidence,* Vol. III, sec. 1938. In the application of this anomalous rule, which is presumably adopted to assist the jury in arriving at more accurate and trustworthy deductions, the Massachusetts courts are often forced to many fine distinctions which amount to the apotheosis of artificiality. The following questions were held proper: "any fact which led you to infer that there was any derangement of intellect," *May v. Bradlee, supra;* "that he was not a bright boy," *Laplante v. Warren Cotton Mills* (1896) 165 Mass. 487; "whether your sister has failed or has not failed in her mental capacity during the past five years," *Clark v. Clark, supra;*

"whether the testatrix knew what she was talking about at that time," *Hogan v. Roche's Heirs, supra.* On the other hand, the court excluded: "whether from the general appearance of the testator he considered him capable of making a contract or of transacting important business," *Smith v. Smith* (1892) 157 Mass. 389; "was he subject to delusions or hallucinations," *Ratigan v. Judge* (1902) 181 Mass. 572. The court in the principal case has apparently followed the established precedent in that jurisdiction of arriving at a more or less arbitrary conclusion under the guise of distinguishing between "opinion" and "fact." Obviously such a differentiation can, at best, be only one of degree. Whether the doctrine be right or wrong, it should be placed upon its true basis.

S. F. D.

EXCHANGE OF PROPERTY—RESCISSION—VALUE OF THE LAND AS RELIEF.—ROHR V. SHAFFER ET AL. (1916) 160 N. W. (IA.) 279.—The defendant represented that certain land situated in Canada was of good quality, capable of immediate cultivation and free from stones, swamp, and brush. Relying on this representation, the plaintiff exchanged his interest in Iowa land for the Canadian land. In reality, this land was partially covered with water and was wholly unfit for cultivation. The plaintiff tendered a reconveyance of the Canadian land and asked that the defendant be required to reinvest him with the title to the Iowa land or to give damages in lieu thereof. *Held,* that upon rescission, the land having been sold, the plaintiff could recover the value of the interest which he formerly had in it.

The general principles with respect to fraud and the power of the contracting party to rescind are equally applicable to the exchanges of land for land as to any other form of transaction. Thus a party to an exchange may, on account of a fraud as to the quality and practical use of the land, ask a court of equity to rescind the transaction and force the other to his duty of reconveyance. *Burgen v. Boardman* (1914) 254 Mo. 238; *Benham v. Tipton* (1915) 181 S. W. (Tex.) 510; *Spence v. Hull* (1915) 146 Pac. (Or.) 95. As rescission means the undoing of the former transaction, in general there must be a restoration to the former status. But rescission for fraud will not be denied to the injured party because restitution cannot be made by the wrongdoer, he having parted in the meantime with the property, the subject matter of the contract. *Wolfinger v. Thomas* (1908) 22 N. D. 57; *Parks v. Brooks* (1915) 155 N. W. (Mich.) 450; *Daiker v. Strelinger* (1898) 50 N. Y. S. 1074. In such a situation, equity will grant relief to the defrauded party by giving him, in lieu of the land which should otherwise have been returned, the value of the same. *Valentine v. Richardt* (1891) 13 N. Y. S. 417; *Fulton v. Fisher* (1911) 151 Ia. 429; *Wright v. Chandler* (1915) 173 S. W. (Tex.) 1173; *Forrest v. Wardman* (1913) 40 App. D. C. 520. The court regards the defendant as a constructive trustee for the plaintiff. Considered in this light, the plaintiff is entitled to the value of the land, to the funds realized from its sale, or to any property purchased through the proceeds derived from the sale